

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GLENN A. PRATT,

Plaintiff,

-v-

ATALIAN GLOBAL SERVICES INC. et al.,

Defendants.

20 Civ. 3710 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

On February 2, 2022, the Court held argument on the competing motions for summary judgment. *See* Dkt. 159. The Court thanks the parties for their thoughtful briefs and vigorous arguments.

As counsel are aware, the Court has repeatedly expressed the view that this case does not lend itself to resolution on summary judgment. *See* Dkts. 99, 158, 159. The Court, however, respected counsels' preference to pursue such motions rather than proceed directly to a bench trial. Regrettably, having carefully reviewed counsel's briefs and supporting materials, as informed by last week's argument, the Court is constrained to reiterate its determination that—save at most as to discrete subsidiary issues—this case cannot be reliably resolved on summary judgment. In the interests of economy, the Court accordingly denies both sides' motions for summary judgment. This case will proceed to the scheduled bench trial, which will begin on March 28, 2022.

The Court took note of counsels' observation that their attempts to resolve this matter would be assisted by some guidance from the Court as to its present assessment of certain issues in the case. With the important caveats that this assessment is preliminary and a product of the

summary judgment record, and that the Court's assessment could change upon presentation of a full record and the opportunity to make credibility determinations, the Court is prepared to say the following.

1. It is likely that defendant Atalian US New England LLC ("Atalian") will be able to establish that one or more warranties in the stock purchase agreement relating to the requirement in a collective bargaining agreement ("CBA") that AGS-Suburban LLC ("Suburban") pay prevailing wages were false.
2. It is likely that Atalian will not be able to establish damages to the extent such are pursued on a purchase-price adjustment theory.

The Court hopes that these preliminary assessments will aid the parties in their efforts to resolve this case.

The parties are directed, by February 28, 2022, to submit a joint pretrial order consistent with the Court's individual rules governing bench trials, available at <https://nysd.uscourts.gov/hon-paul-engelmayer>, along with all other filings required by those rules. Consistent with these rules, the Court's judgment is that it will benefit from the receipt of direct testimony by affidavit from all party and expert witnesses. All such affidavits shall be filed at the time the parties submit their joint proposed pretrial order. All witnesses must be available for cross-examination in court at trial.

The Court hereby schedules a final pretrial conference on March 9, 2022, at 2 p.m. This conference will be held telephonically. The parties should call into the Court's dedicated conference line at (888) 363-4749, and enter Access Code 468-4906, followed by the pound (#) key.

The Clerk of the Court is respectfully directed to close the motions pending at dockets 110 and 126.

SO ORDERED.

A handwritten signature in black ink, reading "Paul A. Engelmayer", written over a horizontal line.

PAUL A. ENGELMAYER
United States District Judge

Dated: February 9, 2022
New York, New York